

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

GOLDEN BETHUNE-HILL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
VIRGINIA STATE BOARD OF)	Civil Action No. 3:14-cv-00852-REP-AWA-
ELECTIONS, et al.,)	BMK
)	
Defendants,)	
and)	
)	
M. KIRKLAND COX, SPEAKER OF THE)	
HOUSE OF DELEGATES, and THE)	
HOUSE OF DELEGATES,)	
)	
Intervenor-Defendants.)	

**DEFENDANTS’ OBJECTIONS TO PROPOSED
CANDIDATES TO SERVE AS SPECIAL MASTER**

Pursuant to this Court’s September 14, 2018 order, defendants hereby submit these objections to proposed candidates to serve as Special Master.

The parties have proposed four candidates. The defendants have proposed Dr. Bernard Grofman and Dr. Nathaniel Persily, and the intervenor-defendants have proposed Dr. Thomas Brunell and Dr. Douglas Johnson.

1. Defendants object to Dr. Brunell. Based on the materials that have been submitted, it does not appear that Dr. Brunell has ever served as a Special Master or court-appointed expert. See generally ECF No. 266-2. In addition, as indicated on Dr. Brunell’s curriculum vitae, see *id.* at 2, he is the author of the 2008 book *Redistricting and Representation: Why Competitive Elections are Bad for America*. According to that book’s summary on Amazon.com, “Brunell makes the case for a radical departure from traditional approaches to

redistricting—arguing that we need to ‘pack’ districts with as many like-minded partisans as possible.”¹ Dr. Brunell’s curriculum vitae also highlights (in a section labeled Other Publications and Community Involvement) that he “[w]ent to the Republican National Convention, July 2016,” see ECF No. 266-2, at 8, while providing no information about the role or context in which Dr. Brunell attended that partisan political event or why his attendance at that event appears on his professional resume. For all of those reasons, defendants submit that Dr. Brunell would not be an appropriate choice to serve as Special Master.

2. Defendants have less information about Dr. Johnson. But, based on the materials that have been provided, defendants submit that Dr. Johnson would not be the most appropriate choice to serve as Special Master in this complicated and time-sensitive case. Like Dr. Brunell, it does not appear that Dr. Johnson has ever served as a Special Master or court-appointed expert and it does not appear that Dr. Johnson has previously worked in Virginia. See generally ECF No. 266-1. In addition, although Dr. Johnson’s curriculum vitae indicates that his company “has performed racial block voting analysis for clients,” *id.* at 4, it does not indicate whether Dr. Johnson is himself experienced with or qualified to perform such analysis and, if not, the identity of the person at Dr. Johnson’s firm who is qualified to perform such an analysis.

Regardless of whether Dr. Johnson may be qualified to serve as a Special Master in some other case, defendants submit that Dr. Grofman would be a far more appropriate choice to serve as Special Master in this one. As his curriculum vitae notes, “Grofman has been a consultant to federal courts on five different occasions,” and he was previously appointed Special Master by this Court to assist with the redrawing of Virginia’s Third Congressional District. ECF No. 264-1, at 2. The Court ultimately adopted one of the two plans proposed by Dr. Grofman, concluding

¹ <https://www.amazon.com/Redistricting-Representation-Competitive-Elections-Controversies/dp/0415964539>.

that it “best remedie[d] the constitutional violation that [the Court] described in” its previous opinion. *Personhuballah v. Alcorn*, 155 F. Supp.3d 552, 556 (E.D. Va. 2016). As his curriculum vitae also indicates, Dr. Grofman developed the methodology that courts use for uncovering and measuring racially polarized voting, “a key element in all redistricting cases brought under the Voting Rights Act or the 14th Amendment.” ECF No. 264-1, at 1; see also *Personhuballah*, 155 F. Supp. 3d at 556 n.1 (noting that Dr. Grofman’s work “has been cited in more than a dozen Supreme Court decisions”).

For those reasons, defendants submit that Dr. Grofman would be the most appropriate Special Master in this case. Defendants believe that Dr. Persily—who has served as a Special Master or court-appointed redistricting expert on seven occasions, see ECF No. 264-2, at 3—would also be an appropriate choice.

Respectfully submitted,

By: /s/
Toby J. Heytens, VSB # 90788
Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7240 – Telephone
(804) 371-0200 – Facsimile
SolicitorGeneral@oag.state.va.us

Mark R. Herring
Attorney General

Matthew R. McGuire, VSB # 84194
Principal Deputy Solicitor General

Stephen A. Cobb
Deputy Attorney General

Michelle S. Kallen
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2018, a true and accurate copy of this paper was filed electronically with the Court's CM/ECF system, which will then send a notification of such filing to the counsel of record in this case

By: /s/
Toby J. Heytens